

## **103 STANDARD CONTRACT PROVISIONS**

### **103.01 GENERAL PROVISIONS (Construction Contract)**

#### **ARTICLE 1. DEFINITIONS**

**A.** "District" as used herein means the District of Columbia, a municipal corporation.

**B.** "Mayor" as used herein means the elected head of the District as set forth in Public Law 93-198, dated December 24, 1973, Title 4, Part B, Section 422(1).

**C.** "Contracting Officer" as used herein means the head of the Department authorized to execute and administrate the Contract on behalf of the District and shall include his duly appointed successor and his authorized representative.

**D.** "Contract Documents" or "Contract" as used herein means Addenda, Contract Form, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

#### **ARTICLE 2. SPECIFICATIONS AND DRAWINGS**

The Contractor shall keep on the work site a copy of Contract drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the contract drawings, or shown on the Contract drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

All contract requirements are equally binding. Each Contract requirement, whether or not omitted elsewhere in the Contract, is binding as though occurring in any or all parts of the Contract. In case of discrepancy:

**1.** The Contracting Officer shall be promptly notified in writing of any error, discrepancy, or omission, apparent or otherwise.

**2.** Applicable Federal and D.C. Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.

**3.** The Contract form, General Provisions and Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.

**4.** Change Orders have priority over: Addenda, Contract drawings and Specifications.

**5.** Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.

**6.** Special Provisions have priority over: Contract drawings and other specifications.

**7.** Shown and indicated dimensions have priority over scaled dimensions.

8. Original scale drawings and details have priority over any other different scale drawings and details.

9. Large scale drawings and details have priority over small scale drawings and details.

Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

### **ARTICLE 3. CHANGES**

**A. DESIGNATED CHANGE ORDERS** - The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

1. In the Contract drawings and specifications;
2. In the method or manner of performance of the work;
3. In the District furnished facilities, equipment, materials, or services; or;
4. Directing acceleration in the performance of the work.

Nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

**B. OTHER CHANGE ORDERS** - Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.

**C. GENERAL REQUIREMENTS** - Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder.

If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of this work under the Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly. Provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Contractor gives written notice as therein required unless this 20 days is extended by the Contracting Officer. And provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective drawings and specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must within 30 days after receipt of a written Change Order under (A) above or the furnishing of a written notice under (B) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim

hereunder may be included in the notice under (B) above.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

**D. CHANGE ORDER BREAKDOWN** - Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead, or profit will be allowed.

Where Contract prices are not appropriate and the nature of the change is known in advance of construction, the parties shall attempt to agree on a fully justifiable price adjustment and/or adjustment of completion time.

When Contract prices are not appropriate, or the parties fail to agree on equitable adjustment, or in processing claims, equitable adjustment for Change Order work shall be per this Article and Article 4 and shall be based upon the breakdown shown in following subsections 1. through 7. The Contractor shall assemble a complete cost breakdown that lists and substantiates each item of work and each item of cost.

**1. Labor** - Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.

**2. Bond** - Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Management Services with the executed Contract.

**3. Materials** - Payment for cost of required materials will be F.O.B. the job site with an allowance for overhead and profit.

**4. Rented Equipment** - Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.

**5. Contractor's Equipment** - Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses or overhead and profit. Payment for such equipment made idle by delays attributable to the District will be based on one-half the derived hourly rate under this subsection.

**6. Miscellaneous** - No additional allowance will be made for general superintendence, use of small tools, and other costs for which no specific allowance is herein provided.

**7. Subcontract Work** - Payment for additional necessary subcontract work will be based on applicable procedures in 1. through 6., to which total additional subcontract work up to an additional 10 percent may be allowed for the Contractor's overhead and profit.

## **ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS**

Pursuant to 23 CFR 635.109, the Contractor is entitled to an equitable adjustment of the contract terms whenever the following situations develop:

### Differing Site Conditions:

(1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(2) Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the contractor of his/her determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(4) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

### Suspensions of Work Ordered by the Contracting Officer:

(1) If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the Contracting Officer in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(2) Upon receipt, the Contracting Officer will evaluate the contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

(4) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

### Significant Changes in the Character of Work

(1) The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(2) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the Contracting Officer may determine to be fair and equitable.

(3) If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(4) The term "significant change" shall be construed to apply only to the following circumstances:

(a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or

(b) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

A major item is defined as any item having an original contract value in excess of 10 percent of the original contract amount.

## **ARTICLE 5. TERMINATION-DELAYS**

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the District may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work involving the delay. In such event the District may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the District or may be on the site of the work and necessary thereof. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the District resulting from his refusal or failure to complete the work within the specified time.

If fixed and agreed liquidated damages are provided in the Contract and if the District does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

1. The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the District in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and

2. The Contractor, within ten (10) days from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgement, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein.

If after notice of termination of the Contractor's right to proceed under the provisions of this article, it is determined for any reason that the Contractor was not in fault under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

The rights and remedies of the District provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

The District may, by written notice, terminate the Contract or a portion thereof as a result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense. When the Contract is so terminated, no claim for loss of anticipated profits will be permitted.

## **ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE DISTRICT**

**A.** The performance of work under the Contract may be terminated by the District in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the District. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

**B.** After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

**4.** Assign to the District, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the order and subcontracts so terminated, in which case the District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**5.** Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.

**6.** Transfer title to the District and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:

**a.** The fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination; and

**b.** The completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the District.

**7.** Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:

**a.** Shall not be required to extend credit to any purchase, and

**b.** May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and

**c.** Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the District to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.

**8.** Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

**9.** Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the District has or may acquire an interest.

**10.** The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.

**11.** "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts, and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items at that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the

Contractor. Final phase of plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

At any time after expiration of the plant clearance period, as defined above, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the District to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the District will accept title to such items, and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

**C.** After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of termination and shall thereupon pay to the Contractor the amount so determined.

**D.** Subject to the provisions of C. above, the subject to any review required by the District's procedures in effect as of the date of execution of the Contract, the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed that total contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E. below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict, or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

**E.** In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D. above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D. above:

**1.** With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:



**a.** The cost of such work;

**b.** The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B. 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E. 1. a. above; and

**c.** A sum, as profit on E. 1. a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparation made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole statement.

**2.** The reasonable cost of the preservation as protection of property incurred pursuant to B. 9; and any other reasonable cost incidental to the termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.

**F.** The total sum to be paid to the Contractor under E. 1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E. 1. above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the District, or to a buyer pursuant to B.7. above.

**G.** The Contractor shall have the right of appeal under Article 7. herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C. above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. and E above, the District shall pay to the Contractor the following:

**1.** If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or

**2.** If an appeal has been taken, the amount finally determined on such appeal.

**H.** In arriving at the amount due the Contractor under this Article, there shall be deducted:

**1.** all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;

**2.** any claim which the District may have against the Contractor in connection with the Contract; and

**3.** the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the

District.

**I.** If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the District and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

**J.** The District may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the District upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the District; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

**K.** Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor, but without direct charge to the District, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

## **ARTICLE 7. DISPUTES**

**A.** "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money, the adjustment or interpretation of contract terms, or other relief arising out of or related to the contract.

**B.** A claim by the District against the Contractor shall be made in writing to the Director, Department of Administrative Services, for an informal hearing and a written decision which shall be final and not subject to review unless an appeal is filed with the District of Columbia Government Contract Appeals Board as authorized in D.C. Code section 1-1189.4 (Procurement Practices Act).

**C.** If a dispute arises under or relates to the contract, a claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal or government agency unless, within 60 days from the receipt of such decision (60-day period shall start on the date the Contracting Officer's written decision is received by the Contractor), the Contractor submits a claim in writing to the Director, Department of Administrative Services, for an informal hearing and decision. The decision of the Director with respect to claims by the Contractor shall be final and not subject to review by any forum, tribunal or government agency unless, within 90 days from the date of receipt of a decision of the Director, or, if no decision is issued within the time limits of D.C. Code section 1-1188.5 (Procurement Practices Act), within 90 days of the expiration of

the applicable time limit, a written notice of appeal is filed by the Contractor with the District of Columbia Government Contract Appeals Board; and

**D.** The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action related to the contract, and comply with any decision of the Contracting Officer.

## **ARTICLE 8. PROTESTS**

Any aggrieved person may protest this solicitation, award or proposed contract award. The protest shall be filed, in writing, with the Contract Appeals Board within ten (10) working days after the basis of the protest is known. The address of the Contract Appeals Board is 717 14th Street, N.W., Suite 430, Washington, D.C. 20005. The aggrieved person shall also mail a copy of the protest to the Contracting Officer.

## **ARTICLE 9. PAYMENTS TO CONTRACTOR**

The District will pay the contract price or prices as hereinafter provided in accordance with District and Federal regulations.

The District will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:

1. If such consideration is specifically authorized by the Contract;
2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and
3. If the Contractor furnishes to the Contracting Officer an itemized list.

In making such progress payments, there shall be retained 10 percent of the estimated amount of the progress payment until final completion and acceptance of the Contract work. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the District, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made thereof without retention of a percentage, less authorized deductions.

All material and work covered by progress payments made shall thereupon become the sole property of the District, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the District to require the fulfillment of all of the terms of the Contract.

Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation of a properly executed voucher and after a release, if required, of all claims against the District arising by virtue of the Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

All payments by the District to the Contractor are subject to the provisions of D.C. Law 9-81 (District of Columbia Government Quick Payment Act of 1984 Amendment Act of 1992).

## **ARTICLE 10. TRANSFER OR ASSIGNMENT**

Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor to any other party without the written consent of the Contracting Officer nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Contractor and the principal on such bond; and any attempted transfer or assignment not authorized by this Article shall constitute a breach of the Contract and the District may for such cause terminate the right of the Contractor to proceed in the same manner as provided in Article 5 herein, and the Contractor and his sureties shall be liable to the District for any excess cost occasioned the District thereby.

## **ARTICLE 11. MATERIAL AND WORKMANSHIP**

**A. GENERAL** - Unless otherwise specifically provided in the Contract, all equipment, material, and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may use any equipment, material, article, or process which, in the judgment of the Contracting Officer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor's expense.

**B. SURPLUS MATERIALS USE** - Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials "as is" with no further expense or liability to the District. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.

**C. DISTRICT MATERIAL** - No materials furnished by the District shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the District of all materials furnished by the District to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be

in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the District for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions thereof and will be charged to his account.

**D. PLANT** - The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including lighting required for night work as directed, as a Contract requirement.

All equipment, tools, formwork, and staging used on the project shall be sufficient size and in proper mechanical and safe condition to meet work requirements, to produce satisfactory work quality and to prevent injury to persons, the project, or adjacent property.

When methods and equipment are not prescribed in the Contract, the Contractor is free to use tools, methods, and equipment that he satisfactorily demonstrates will accomplish the work in conformity with Contract requirements.

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools, and equipment and reasons for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If, after trial use of the substituted methods, tools, and equipment, the Contracting Officer determines that work produced does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools, and equipment.

**E. CAPABILITY OF WORKERS** - All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require the Contractor to remove from the work any such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest. Such request will be in writing.

**F. CONFORMITY OF WORK AND MATERIALS** - All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, materials, and construction requirements shown or intended by the drawings and specifications.

When materials, products, or work cannot be corrected, written notice of rejection will be issued. Rejected materials, products, and work shall be eliminated from the project and acceptably replaced at Contractor's expense. The Contracting Officer's failure to reject any portion of the project shall not constitute implied acceptance nor in any way release the Contractor from Contract requirements.

**G. UNAUTHORIZED WORK AND MATERIALS** - Work performed or materials ordered or furnished for the project deviating from requirements without written authority will be considered unauthorized and at Contractor's expense. The District is not obligated to pay for unauthorized work. Unauthorized work and materials may be ordered removed and replaced at Contractor's expense.

## **ARTICLE 12. INSPECTION AND ACCEPTANCE**

Except as otherwise provided in the Contract, inspection and test by the District of material and workmanship required by the District shall be made at reasonable times and at the site of the work, unless the

Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the District after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

The Contractor shall, without charge, replace any material and correct any workmanship found by the District not to conform to the Contract requirements, unless in the public interest the District consents to accept such material or workmanship with an appropriate adjustment in the Contract price. The Contractor shall promptly segregate and remove rejected material from the premises at Contractor's expense.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the District:

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or
2. May terminate the Contractor's right to Proceed in accordance with Article 5 herein.

The Contractor shall furnish promptly, without additional cost to the District, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspections and tests by the District shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

Should it be considered necessary or advisable by the Contracting Officer at any time before acceptance of the work, either in part or in its entirety, to make an examination of work completed, by removing or tearing out same, the Contractor shall, on request promptly furnish all necessary facilities, labor and material to do same. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted an equitable extension of time.

Unless otherwise provided in the Contract, acceptance by the District will be made as promptly as practicable after completion and inspection of all work required by the Contract. Acceptance shall be final and conclusive except as regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the District's rights under any warranty or guaranty.

### **ARTICLE 13. SUPERINTENDENCE BY CONTRACTOR**

The Contractor shall give his personal superintendence to the performance of the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work site at all times during progress, with authority to act for him.

## **ARTICLE 14. PERMITS AND RESPONSIBILITIES**

The Contractor shall, without expense to the District, be responsible for obtaining any necessary licenses, certificates, and permits, and for complying with any applicable Federal, State, and Municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety, health and environmental precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

## **ARTICLE 15. INDEMNIFICATION**

The Contractor shall indemnify and save harmless the District and all of its officers, agents, and servants against any and all claims or liability arising from or based on, or as a consequence or result of, any act, omission or default of the Contractor, his employees, or his subcontractors, in the performance of, or in connection with, any work required, contemplated, or performed under the Contract.

## **ARTICLE 16. PROTECTION AGAINST TRESPASS**

Except as otherwise expressly provided in the Contract, the Contractor is authorized to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the Contracting Officer.

## **ARTICLE 17. CONDITIONS AFFECTING THE WORK**

**A. GENERAL** - The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work specified without additional expense to the District. The District assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the District is expressly stated in the Contract.

**B. WORK AND STORAGE SPACE** - Available work and storage space designated by the District shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space.

If no area is designated or the area designated is not sufficient for the Contractor's operations, he shall obtain necessary space elsewhere at no expense or liability to the District.

**C. WORK ON WEEKENDS, LEGAL HOLIDAYS, AND AT NIGHT** - No work shall be done at any time on Saturdays, Sundays or legal holidays, or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer or his designee, or as otherwise specified in the Contract, and pursuant to the requirements of the Police Regulations of the District.

**D. EXISTING FEATURES** - Subsurface and topographic information including borings data, utilities data, and other physical data contained in the Contract or otherwise available, are not intended as

representations or warranties but are furnished as available information. The District assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.

**E. UTILITIES AND VAULTS** - The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

For any underground utility or vault encountered, the Contractor shall immediately notify the Engineer and take necessary measures to protect the utility or vault and maintain its service until relocation by owner is accomplished. No additional payment will be made for the encountering of these obstructions.

In case of damage to utilities by the Contractor, either above or below ground, the Contractor shall restore such utilities to a condition equivalent to that which existed prior to the damage by repairing, rebuilding, or otherwise restoring as may be directed, at the Contractor's sole expense. Damaged utilities shall be repaired by the Contractor or, when directed by the Contracting Officer, the utility owner will make needed repairs at the Contractor's expense.

No compensation, other than authorized time extensions, will be allowed the Contractor for protective measures, work interruptions, changes in construction sequence, changes in methods of handling excavation and drainage, or changes in types of equipment used, made necessary by existing utilities, imprecise utility or vault information, or by others performing work within or adjacent to the project.

**F. SITE MAINTENANCE** - The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the District. Trash containers shall be furnished, maintained, and emptied by the Contractor to the satisfaction of the Engineer. Excavated earthwork, stripped forms, and all other materials and debris not scheduled for reuse on the project shall be promptly removed from the site.

The Contracting Officer may order the Contractor to clean up the project site at any stage of work at no added expense to the District. If the Contractor fails to comply with this order, the Contracting Officer may require the work to be done by others and the costs will be charged to the Contractor.

Upon completion of all work and prior to final inspection, the Contractor shall clean up and remove from the project area and adjacent areas all excess materials, equipment, temporary structures, and refuse, and restore said areas to an acceptable condition.

**G. PRIVATE WORK** - Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting District projects with any labor, materials, tools, equipment, supplies, or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

**H. DISTRICT OF COLUMBIA NOISE CONTROL ACT OF 1977** - The Contractor shall be in strict compliance with D.C. Law 2-53, District of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C. Register 5293.

## **ARTICLE 18. OTHER CONTRACTS**

The District may undertake or award other contracts for additional work and the Contractor shall fully



cooperate with such other contractors and District employees and carefully coordinate his own work with such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by District employees. The District assumes no liability, other than authorized time extension, for Contract delays and damages resulting from delays and lack of progress by others.

## **ARTICLE 19. PATENT INDEMNITY**

Except as otherwise provided, the Contractor agrees to indemnify the District and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Federal Government to be kept classified or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal by or for the account of the District, of supplies furnished or construction work performed hereunder.

## **ARTICLE 20. ADDITIONAL BOND SECURITY**

If any surety upon any bond furnished in connection with the Contract becomes unacceptable to the District, or if any such surety fails to furnish reports as to his financial conditions from time to time as requested by the District, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the District and of persons supplying labor or materials in the prosecution of the work contemplated by the Contract. Provided, that upon the failure of the Contractor to furnish such additional security within ten (10) days after written notice so to do, all payments under the Contract will be withheld until such additional security is furnished.

## **ARTICLE 21. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no persons or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the District shall have the right to terminate the Contract without liability or in its discretion to deduct from, the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

## **ARTICLE 22. APPOINTMENT OF ATTORNEY**

The Contractor does hereby irrevocably designate and appoint the Clerk of the Superior Court of the District of Columbia and his successors in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

The Contractor expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the Contractor was personally within the District and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the Contractor failed to receive a copy of such process, notice, pleading or other paper so served upon the said Clerk, provided that said Clerk shall have deposited in the United States mail, certified and postage prepaid, a copy of such process, notice, pleading, or other papers addressed to the Contractor at the address stated in the Contract.

## **ARTICLE 23. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Mayor or Member of the City Council or officer or employee of the District shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom and any contract entered into by any Contracting Officer in which he or any officer or employee of the District shall be personally interested shall be void, and no payment shall be made thereon by the Director or any officer thereof; but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit.

## **ARTICLE 24. WAIVER**

No waiver of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the Mayor be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the Mayor in writing.

## **ARTICLE 25. BUY AMERICAN**

**A. AGREEMENT** - In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059-63 Comp., p 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of the Contract, except for nondomestic material listed in the Contract.

**B. DOMESTIC CONSTRUCTION MATERIAL** - "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

**C. DOMESTIC COMPONENT** - A component shall be considered to have been "mined, produced, or manufactured in the United States" regardless of its source, in fact, if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the District to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

**D. FOREIGN MATERIAL** - When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials can not exceed one-tenth of one percent of the total project cost, or \$2,500.00, whichever is greater.

## **ARTICLE 26. TAXES**

**A. FEDERAL EXCISE** - Materials, supplies, and equipment are not subject to the Federal Manufacturer's Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies, and equipment passes to the District under the Contract. The Contractor shall in such

cases furnish his subcontractors and suppliers with a purchaser's certificate in the form prescribed by the U.S. Internal Revenue Service.

**B. SALES AND USE TAXES** - Materials which are physically incorporated as a permanent part of real property are not subject to District of Columbia Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor's Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the District of Columbia. Where the Contractor, subcontractor, or material supplier has already paid the Sales and Use Tax on materials, as prescribed above, the Sales and Use Tax Regulations of the District of Columbia permit the Contractor, subcontractor, or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor, or material supplier must satisfy the Finance Officer, D.C., that no sum in reimbursement of such tax was included in the Contract or else that the District has received a credit under the Contract in an amount equal to such tax.

District of Columbia Sales and Use Tax shall be paid on any material and supplies, including equipment rentals, which do not become a physical part of the finished project. (See District of Columbia Sales and Use Tax Administration Ruling No. 6).

Material and supplies required under contracts relating to Glenn Dale Hospital, Glenn Dale, Maryland, and Children's Center, Laurel, Maryland, are subject to the Maryland State Sales and Use Tax, effective July 1, 1968. BIDDERS SHALL INCLUDE SUCH TAX IN THE BIDS.

Contracts relating to Department of Corrections, Lorton, Virginia, are subject to the Virginia Retail Sales and Use Tax, effective September 1, 1966, when incorporated in public works contracts of the District. BIDDERS SHALL INCLUDE SUCH TAX IN THEIR BIDS.

The Contractor, subcontractor or material supplier shall provide proof of compliance with the provisions of D.C. Law 9-260, as amended, codified in D.C. Code Title 46-103-Employer Contributions, prior to contract Award.

The Contractor, subcontractor or material supplier shall provide proof of compliance with the applicable tax filing and licensing requirements set forth in D.C. Code, Title 47-Taxation and Fiscal Affairs, prior to contract award.

## **ARTICLE 27. SUSPENSION OF WORK**

The Contracting Office may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the District.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer in the administration of the Contract, or by his failure to act within the time specified in the Contract (or, if no time is specified, within a reasonable time), an adjustment will be made for an increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Article for any suspension, delay or interruption to the extent:

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or

2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

1. For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and

2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under the Contract.

## **ARTICLE 28. SAFETY PROGRAM**

**A. GENERAL** - In order to provide safety controls for the protection of the life and health of District and Contract employees and the general public; prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the Contract, the Contractor shall comply with all applicable Federal and local laws governing safety, health, and sanitation including the Safety Standards, Rules and Regulations issued by the American National Standards, U.S. Department of Labor, U.S. Department of Health and Human Services, D.C. Minimum Wage and Industrial Safety Board and the latest edition of "Manual of Uniform Traffic Control Devices" issued by the Federal Highway Administration.

The Contractor shall also take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary.

The Contractor shall designate one person to be responsible for carrying out the Contractor's obligation under this Article.

The Contractor shall maintain an accurate record of all accidents resulting in death, injury, occupational disease and/or damage to property, materials, supplies and equipment incidental to work performed under the Contract. Copies of these reports shall be furnished to the Contracting Officer within two working days after occurrence.

The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

This Article is applicable to all subcontractors used under the Contract and compliance with these provisions by the subcontractors will be responsibility of the Contractor.

(In Contracts involving work of short duration or of nonhazardous character, the following Section B. will be deleted by Special Provision.)

**B. CONTRACTOR'S PROGRAM SUBMISSION** - Prior to commencement of the work, the Contractor shall:

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.

2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

## **ARTICLE 29. RETENTION OF RECORDS**

Unless otherwise provided in the Contract, or by applicable statute, the Contractor, from the effective date of Contract completion and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor but without direct charge to the District, all his books, records, documents and other evidence, bearing on the costs and expenses of the Contractor under the Contract.

## **103.02 CONTRACT LABOR PROVISIONS**

The provisions of the Federal Labor Standards (construction contracts) of the Standard Contract Provisions, as amended or modified, that are applicable to the project are made a part of the construction contract. The Contractor shall keep fully informed of these articles which in any manner affect those engaged or employed on the work. He shall at all times observe and comply with these provisions. Penalty formulations of the Federal Labor Standards are prescribed in Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

### **103.02 A. STANDARD CONTRACT CLAUSES**

Each contract and subcontract at any tier "in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decoration of a public building or public work, or building" shall be subject to these labor provisions.

#### **1. MINIMUM WAGES**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor, United States Department of Labor, hereinafter referred to as the Secretary of Labor, under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under (1)(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, are considered wages paid to such laborers or mechanics subject to the provisions of 103.02A.1.(iv); also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 103.02A.(4). Laborers

or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 103.02A.(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**(ii)(A)** The Contracting Officer of the District of Columbia, Department of Public Works, hereinafter referred to as the Contracting Officer, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

**(1)** Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(4)** With respect to helpers as defined in 29 CFR 5.2 (n)(4), such a classification prevails in the area in which the work is performed.

**(B)** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, agree with the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the contracting officer within the 30 day period that additional time is necessary.

**(C)** In the event the Contractor, or the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

**(D)** The wage rate (including fringe benefits where appropriate) determined pursuant to (B) and (C) above shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any cost reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. WITHHOLDING**

The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the United States Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. PAYROLLS AND BASIC RECORDS**

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly numbers of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approval programs shall maintain written evidence of the registration of apprenticeship programs, the certification of trainee programs, the registration of the apprenticeship programs, the certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the District of Columbia Government if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the District of Columbia Government. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 may be purchased for this purpose from the Superintendent of Documents (FSN 029-005-0014-1), U.S. Government

Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

**(B)** Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be maintained under 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(C)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by (B) immediately above.

**(D)** The Contractor shall notify the Contracting Officer in writing of all periods in which no work is performed. This notification applies to the prime Contractor and to all subcontractors.

**(E)** The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The Contractor or subcontractor shall make the records required under 103.02A.3.(i) available for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the United States Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. APPRENTICES AND TRAINEES**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeypersons on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not



registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyperson hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyperson's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeypersons on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeypersons hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal Employment Opportunity.** The utilization of apprentices, trainees, and journeypersons under this part shall be in conformity with the equal employment opportunity requirements and Executive Order 11246, as amended and 29 CFR Part 30.

## **5. COMPLIANCE WITH COPELAND ACT REQUIREMENTS**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

## **6. SUBCONTRACTS**

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Contracting Officer may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5

## **7. CONTRACT TERMINATION: DEBARMENT**

A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

## **8. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by reference in this Contract.

## **9. DISPUTES CONCERNING LABOR STANDARDS**

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

## **10. CERTIFICATION OF ELIGIBILITY**

a. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **103.02 B. CONTRACT WORK HOURS AND SAFETY STANDARDS**

The Agency Head shall cause or require the Contracting Officer to insert the following clauses set forth in B.1., 2., 3. and 4. in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 5.5(a) or 4.6 of Part 4 of 29 CFR. As used in this paragraph, the terms "laborers" and "mechanics" include watchpersons and guards.

### **1. OVERTIME REQUIREMENTS**

No contractor or subcontractor contracting for any part of the contract work which may require or involve

the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

## **2. VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES**

In the event of a violation of the clause set forth in 103.02B.1., the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in B.1. above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clauses set forth in B.1. above.

## **3. WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES**

The Contracting Officer shall upon his own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in B.2 above.

## **4. SUBCONTRACTS**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in B.1 through B.4, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in B.1 through B.4.

## **103.02 C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

In addition to the clauses contained in 103.02B., in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 5.1, the Agency Head shall cause or require the Contracting Officer to insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watch men, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency head shall cause or require the Contracting Officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **103.02 D. CONVICT LABOR (18 USC 436)**

Convict labor shall not be used on contract work unless otherwise provided by law.

### **103.02 E. EQUAL OPPORTUNITY (MAYOR'S ORDER 85-85)**

On contracts exceeding \$25,000.00, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, sex, religion or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, religion or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Article. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, age, sex, religion or national origin.

The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or worker's representative of the Contractor's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor shall permit access to his books, records and accounts by the Contracting Officer and the Department of Human Rights and Minority Business Development or their agents, for purposes of investigation to ascertain compliance with this Article.

In the event of the Contractor's non-compliance with this Article, the Contract may be canceled in whole or in part and the Contractor may be declared ineligible for further District contracts.

The Contractor shall include the provisions of this Article in every subcontract unless exempted by rules, regulations or orders of the District, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such directions by the Contracting Officer, the Contractor may request the District to enter into such litigation to protect the interest of the District.

### **103.02 F. NONSEGREGATED FACILITIES**

The Contractor certifies that he does not and will not maintain or provide for his employment any segregated facility at any of his establishments; that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained; and that he will obtain and retain identical certifications from proposed subcontractors prior to award of subcontracts.

"Segregated facilities" shall mean any waiting room, work area, wash and rest rooms, restaurant and other eating area, time clock, locker room and other storage or dressing area, parking lot, drinking fountain, recreation or entertainment area, transportation and housing facility provided for employees which is segregated by explicit directive or is segregated on the basis of race, color, age, sex, religion or national origin, because of habit, local custom, or otherwise.

Penalty for violation or making false statements is prescribed in 18 USC 1001.

### **103.02 H. UTILIZATION OF MINORITY BUSINESS ENTERPRISES**

The Contractor agrees to use his best efforts to utilize minority business enterprises as his subcontractors to the fullest extent consistent with the efficient performance of the Contract. As used in the Contract, the term "minority business enterprise" means a business at least 50 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock which is owned by minority group members.

For the purpose of the above definition, minority group members are African Americans, Spanish speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

The Contractor further agrees to establish a program for utilizing minority business enterprises as subcontractors and suppliers under the Contract. In this connection each Contractor or subcontractor shall:

1. Award a reasonable proportion of all subcontracts and purchase orders to minority business enterprises;
2. Provide reasonable technical assistance to minority business enterprises as may be appropriate so as to facilitate the participation of minority enterprises:
3. Assure that all known minority enterprises will have an equitable opportunity to compete for subcontracts or purchase orders, particularly by arranging solicitations, time for preparations of bids, quantities, specifications and delivery schedules so that minority business enterprises may participate;
4. Maintain records showing:
  - a. procedures which have been adopted to comply with the policies set forth in this Article including the establishment of a source list of minority business enterprises;
  - b. awards to minority business enterprises on the source list; and
  - c. specific efforts to indemnify and award contracts to minority business enterprises.
5. Include this Utilization of Minority Business Enterprises Article in all subcontracts which offer substantial minority business subcontracting opportunities;
6. Cooperate with the Contracting Officer and the Department of Human Rights and Minority Business Development in any study and survey of the Contractor's minority business enterprises procedures and practices that may be conducted from time to time;
7. Submit periodic reports of subcontracting to minority business enterprises in such form and manner and at such time as may be prescribed by the Contracting Officer or the Department of Human Rights and Minority Business Development.

### **103.02 I. WEEKLY COMPLIANCE STATEMENT**

The Contractor and each subcontractor engaged in the construction, prosecution, completion or repair of any public building or public work shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by these Labor Provisions during the preceding weekly payroll period. The statement shall be executed by the Contractor or subcontractor, or by an authorized officer or employee or the Contractor or subcontractor, who supervised the payment of wages, and shall be on the form entitled "Weekly Statement of Compliance" (Form No. DC 2640-11).

### **103.03 EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES**

**A. GENERAL.** Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA -1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

The Contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in the review of his/her activities under the contract.

The Contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

**B. EQUAL EMPLOYMENT OPPORTUNITY POLICY.** The contractor will accept as his/her operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

" It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

**C. EQUAL EMPLOYMENT OPPORTUNITY OFFICER.** The Contractor will designate and make known to the Contracting Officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

**D. DISSEMINATION OF POLICY.** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be

taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

3. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

1. Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

2. The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, other appropriate means.

**E. RECRUITMENT.** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

The contractor shall, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractors to do the same, such implementation violates Executive Order 11246, as amended.)

The contractor shall encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**F. PERSONNEL ACTIONS.** Wages, working conditions, and employee benefits shall be established

and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

1. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
2. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
3. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
4. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### **G. TRAINING AND PROMOTION.**

1. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
2. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.
3. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
4. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**H. UNIONS.** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

1. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying



employment.

2. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

3. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

4. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

#### **I. SUBCONTRACTING.**

1. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

2. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

#### **J. RECORDS AND RECEIPTS.**

1. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

a. The number of minority and non-minority group members and women employed in each work classification on the project.

b. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).

c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

d. The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

2. All such records must be retained for a period of three years following completion of the contract

work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

3. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

## **103.04 EMPLOYEE TRAINING REQUIREMENTS**

When referenced in the Contract Special Provisions, this article shall be utilized in the implementation of 23 U.S.C. Pt. 230, Subpt. A, App. B.

The contractor shall provide on-the-job training aimed at developing full journeyworkers in the type of trade or job classification involved.

In the event that a contractor subcontracts a portion of the contract work, he/she shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also ensure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractors needs and the availability of journeyworkers in the various classifications with a reasonable area of recruitment.

Prior to commencing construction, the contractor shall submit to the Department for approval the names, addresses and social security numbers of the trainees to be trained in each selected classification. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him/her on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyworker status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he/she has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he/she has successfully completed a training course leading to journeyworker status or in which he/she has been employed as a journeyworker. The contractors should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the contractors records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program approved by the District of Columbia, Department of Public Works and the Federal Highway

Administration. The Department and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyworker status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by The Bureau and Training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The Contractor will be reimbursed in the amount indicated in the unit price column of the Pay Item Schedule in the Bid Form and Proposals for each hour of training. As verified by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for off-site training indicated above may only be made to the contractor where he/she does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainees wages during the off-site training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyworker, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his/her training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his/her work classification or until he/she has completed his training program. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his/her responsibilities under this Training Special Provision if he/she has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyworkers rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The Contractor shall furnish the trainee a copy of the program he/she will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The Contractor will provide for the maintenance of records and furnish periodic reports documenting his/her performance under this article.

